

Application No. 10/644,387
Paper Dated: August 31, 2007
In Reply to USPTO Correspondence of May 31, 2007
Attorney Docket No. P-4987P1P1P1 (3896-070968)

REMARKS

Claims 1-33 are pending in this application. Claims 1, 13, 15, 19, 24, and 26 are in independent form. Claims 24 and 25 are allowed. Claims 1-6, 9-17, 19-23, and 26-33 are rejected. Claims 7, 8, and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 26 has been amended.

Claims 26-33 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite. The Examiner states that the phrase “said container” in line 7 of claim 26 is unclear as the claim previously recites “at least first and second containers” in line 2 and “one of said containers” in line 5. Claim 26, line 7 has been amended to state “said selected one of said containers” in view of the step of “selecting an appropriate one of said containers” in line 5 of the claim. No new matter has been added.

Claims 1-6, 10-17, and 19-23 are rejected under 35 U.S.C. §102(b) as being anticipated by Konrad (5,871,700). Claims 1-3, 9, 10, 13, and 14 are rejected under 35 U.S.C. §102(b) as being anticipated by Gautsch (5,888,831). Each of these rejections is respectfully traversed.

The present claimed invention is directed to a plurality of container assemblies, i.e., at least two container assemblies, wherein each container assembly has substantially identical external dimensions, however the internal volumes of the container assemblies differ from one another. The container assemblies are configured in accordance with the required volume of material to be collected or maintained in the respective container assemblies and to enable uniform head spaces despite the different volumes of materials in the respective container assemblies.

Rejections Based on Konrad:

The Examiner contends that Konrad anticipates the claims based on the alleged teachings of a cylindrical container having an inner container surrounded by an outer housing having substantially the same dimensions. Konrad, however, fails to teach or suggest a plurality of containers having identical outer dimensions, let alone each of the containers, within a plurality of containers having a different internal dimension. Instead Konrad merely teaches a

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tube in a tube to form a container with no teachings as to providing a plurality of containers with different internal volumes.

In view of our arguments filed on March 13, 2007, the Examiner states that Konrad shows a holding device comprised of nested containers and this device is best shown in Figures 1 and 5-9. The Examiner further states that Konrad shows one embodiment of the device at col. 9, lines 15-55 that may include a film (46) on the inside container instead of a painted or printed layer. The Examiner then contends that the embodiment having the film would yield an inner container that has a thickness that is different from the embodiment that does not have the film. Applicants respectfully disagree. As stated above, Konrad merely teaches a tube in a tube to form a container with no teachings as to providing a plurality of containers with different internal volumes. In the present invention, the plurality of container assemblies provide for at least two container assemblies, wherein each container assembly has substantially identical external dimensions, however the internal volumes of the container assemblies differ from one another. The container assemblies are configured in accordance with the required volume of material to be collected or maintained in the respective container assemblies and to enable uniform head spaces despite the different volumes of materials in the respective container assemblies. As noted in the specification in paragraphs [0004]-[0006], [0009], and [0011], maintaining a substantially uniform head space in the collection of container assemblies is important in minimizing sample-to-air interaction and maintaining consistent test results. Konrad does not address this feature of providing substantially identical head spaces in the respective container assemblies of the container collection. The feature of providing a plurality of containers whereby the first and second containers enable collection of first and second volumes of material with substantially identical head space in the respective containers is recited in independent claim 15.

For the reasons set forth above, it is respectfully requested that the rejection of claims 1-6, 10-17, and 19-23 under 35 U.S.C. 102(b) be withdrawn as Konrad fails to teach each and every feature of the present claims.

Rejections Based on Gautsch

The Examiner contends that Gautsch anticipates the claims based on the alleged teachings of a liquid separation device comprises of an outer container and an inner container

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closed by a common lid wherein one embodiment features an inner container having a flat bottom with perforations and the other embodiment features an inner container having a spout. The Examiner further contends that Figures 2B and 3B show a plurality of container assemblies—each assembly having an inner container nested within the outer container and each inner container having a different volume than the other container. Applicants respectfully disagree. Similar to Konrad, Gautsch also simply shows two different embodiments which essentially comprise a tube within a tube arrangement with no teachings as to providing a plurality of containers with different internal volumes, let alone a plurality of container assemblies with different internal volumes which enable collection of first and second volumes of material with substantially identical head space in the respective container assemblies of the container collection.

Based on the foregoing remarks, reconsideration of the rejection and allowance of claims 1-6, 9-17, 19-23, and 26-33 is requested.

Should the Examiner have any questions or wish to discuss this matter in further detail, the Examiner is invited to contact Applicants' undersigned attorney by telephone at 412-471-8815.

Respectfully submitted,
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